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# JUDICIAL ACTION BY THE PROVINCIAL LEGISLATURE OF MASSACHUSETTS.<sup>1</sup>

ACTS AND RESOLVES OF THE PROVINCE OF MASSACHUSETTS BAY.

1708-9.

CHAPTER 24.

*Order upon the petition of Joses Bucknam relating to Jn<sup>o</sup> Rows Estate.*

UPON READING a Petition of Joses Bucknam of Charles-Town Praying to be Relieved in a Purchase made by his Father Joses Bucknam Dec<sup>d</sup> of John Rowe late Husband of Ruth Rowe, of a certain Parcel of Land in Charlestown, Which the said Ruth Rowe hath obtained Judgement in the Inferiour Court in Middlesex to recover back the Possession, An Appeal being made therefrom to the next Superiour Court to be held in & for the said County;

*Ordered* That the Action of Appeale be continued unto the next Term further And that Ruth Rowe the Widow & Guardian be Serv'd with a Copy of this Petition; And that a Hearing be had thereupon, on the Second Friday of the next Session of this Court.

CHAPTER 25.

*Order upon the petition of Nath<sup>l</sup> Reynes's, complaining of a Judgment by default against him.*

UPON THE PETITION of Nath<sup>l</sup> Reynes, Complaining of a Judgement given against him by Default at the Suit of Cpt: John Frost in the Inferiour Court for the County of York,

*Ordered* That the Pet<sup>r</sup> be referred to the next Superiour Court of Judicature to be holden for the County of Yorke by Writ of Error, for remedy in the course of the Common Law.

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<sup>1</sup> We are permitted by Mr. Bigelow, Editor of the Province Laws of Massachusetts, to print, in advance of the official publication, a few chapters from the ninth volume of ACTS AND RESOLVES OF THE PROVINCE OF MASSACHUSETTS BAY. These chapters will be found of special interest in constitutional history and law, throwing light in particular upon the history of equity jurisdiction in Massachusetts. In these records, which are of the first quarter of the 18th century, the provincial legislature will often be found acting in a judicial capacity, sometimes trying causes in equity, sometimes granting equity powers to some court of the common law for a particular temporary purpose, and constantly granting appeals, new trials, and other relief from judgments, on equitable grounds. — ED.

And the Justices of the said Court are hereby Directed, upon Inspecting the Process and Judgment in the Suit aforesaid ; And also the Execution thereon issued to do therein what of right and to Justice appertaineth and ought to be done.

CHAPTER 82.

*Order on Cpt: Ephraim Savage's Petition, Complaining of Ouster of Lands by the Sheriff.*

UPON READING a Petition of Captain Ephraim Savage, Complaining That he is Ousted of a Messuage or Tenement Orchard and Land, Consisting of about thirty acres, Lying situate in Reddin within the County of Midd<sup>x</sup> by Sheriffe of, the s<sup>d</sup> County mislaying an Execution issuing out of Her Ma<sup>ty's</sup> Superiour Court of Judicature at the Suit of Francis Smith, Jeremiah Sweyne and Mary his wife, and Judgment rendred for the said Smith and Sweyne to recover Possession or One Hundred acres of Land according to their Demand by the Writ or Attachment. And in Variance from the Verdict, Judgment and Precept or Writ of *haber facias possessionem* to him Directed.

*Ordered* That Her Ma<sup>ty's</sup> Justices of the said Superiour Court at their next Sitting within the County of Mid<sup>x</sup> Do Inspect and Examin into the Record and process of the said Suit and Execution made thereon and cause what is amiss therein to be rectified, and to see that be done w<sup>ch</sup> is agreeable to Right & Justice. That the Subject be not oppressed grieved & have just cause of Complaint.<sup>1</sup>

CHAPTER III.

*Order for a hearing on Nath<sup>n</sup> Hobart's Petition, praying Remedy from forfeiture of a penal bond.*

UPON READING a petition of Nathaniel Hobart of Hingham, Praying that this Court will provide Remedy to Relieve him in Equity from the Forfeiture of a Penal Bond found against him at the Superiour Court, at the Suit of Ebenezer Prout ;

*Ordered* That the Pet<sup>r</sup> cause Ebenezar Prout the Adverse party to be Served with a Copy of this Pet<sup>con</sup> That he may shew cause if any he have, on the Second Wednesday of the next Session of this Court, why this Court should not consider the Complaint thereinmencond and provide releife for the Pet<sup>r</sup> as is prayed for.

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<sup>1</sup> See ACTS AND RESOLVES, 1709-10, chapter 104, *post*, p. 211.

1709-10.

## CHAPTER 6.

*Order, on Nath<sup>l</sup> Hobart's Petition, Suspending Executions of Judgment in Suit Between Him and Ebenezer Prout.*

THE PETITIONER<sup>1</sup> Praying that there may be a Suspension of the Levying of an Execution upon a Judgement given against him at the Suit of Ebenezer Prout under Consideration of this Court to Direct to a Relief in Equity, Also an Execution upon a Judgement for him against the said Ebenezer Prout, Until his Case be heard & determined in Equity by this Court ;

*Ordered* That the Praier of this Petition, be Granted So far as that, the Levying of both the abovementioned Executions, be Suspended, untill the end of the present Session that both Parties may freely attend the Hearing, Granted them by this Court, & their Determination thereon.

## CHAPTER 9.

*Order on the affair of Nath<sup>l</sup> Hobart & Ebenezer Prout.*

UPON A HEARING had this Day between Nathaniel Hobart of Hingham, & Ebenezer Prout, by a Petition prefer'd to this Court by the s<sup>d</sup> Hobart ;

*Ordered* That the Pet<sup>r</sup> be referr'd to the next Superiour Court of Judicature, to be held for the County of Suffolk ; And that the Justices of the s<sup>d</sup> Court Examin into y<sup>e</sup> Judgements given in Law within y<sup>e</sup> said Court against Each party respectively on y<sup>e</sup> Forfeiture of Bonds and Chancer the said Forfeitures to the just Debt and Damages in Equity and good conscience. And yt y<sup>e</sup> Levying of Execution on the Judgem<sup>ts</sup> on either side & all other Proceedings in the law, referring to y<sup>e</sup> s<sup>d</sup> Judgments, be suspended until y<sup>e</sup> End of y<sup>e</sup> said Superiour Court.

## CHAPTER 22.

*Order empowering Joseph Parker to sell Lands of y<sup>e</sup> Estate of Richard Blood Dec<sup>d</sup>.*

[UPON READING] A Petition of Joseph Parker of Groton, Praying to be Impowered to make Sale of the Land of his Father in Law Richard Blood late of the same Place Dec<sup>d</sup> to make him some Recompence for his great Charge & Trouble to maintain Isabel Relict

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<sup>1</sup> Nathaniel Hobart.

Widow of the said Blood, now of about a Hundred Years old, presented at the Session of this Court in May 1706, & Revived in May Court 1708, And then refer'd to the Justices of the Superiour Court to Cause all Persons concern'd to appear before them, And to Examine into the Matter of the said Petition, & Report thereon ; [and]

The Report of the Justices being now Read ; Viz, That they are of Opinion the Petition is reasonable & ought to be granted ;

*Orderea* That the Prayer of the Pet<sup>con</sup> be Granted. Viz<sup>t</sup> That y<sup>e</sup> Pet<sup>r</sup> be and is Impowred to make Sale of y<sup>e</sup> Land therein mentioned and to Execute a good sufficient and Legal Deed of Sale for y<sup>e</sup> same for the End Inserted in the Petition.

#### CHAPTER 73.

##### *Order on Petition of Jer: & Mercy Tay for putting a Bond in Suit.*

UPON READING a Petition of Jeremiah Tay of Boston Mariner & Mercy his Wife only Child of Nathaniel Woodward late of Boston Mariner Dec<sup>d</sup> Setting forth That Robert Woodward Father of the said Nathaniel dying Intestate, The County Court for Suffolk (having then Power by Law for Distribution & Settlement of the Estates of Intestates), disposed of the whole Estate of the said Robert Woodward unto Rachel his Wife & Administratrix (Who had intermarried with one Thomas Harwood) for Payment of the Dec<sup>as</sup> Debts & Education of his Children, And Assign'd Forty Pounds to the said Rachel for Dower, The Remainder in Portions to his Children, The said Admin<sup>r</sup> or her Husband Thomas Harwood to give Security for Payment thereof, And the said Thomas Harwood having accordingly given Bond to M<sup>r</sup> Edward Rawson then Recorder of the said County (who is since Dec<sup>d</sup>) & his Successors for Performance thereof, Praying that some Person may be assign'd & appointed capable in Law to put the said Bond in Suit, Her Father Nathaniel Woodward not having received his Portion ;

*Ordered* That Addington Davenport Esq<sup>r</sup> present Register of the County of Suffolk, Be and hereby is Directed and Impowred to put the withinmentioned Bond in Suit, to the use of the persons for whome it was given.

#### CHAPTER 104.

##### *Order on Cpt: Ephraim Savages Petition, Complaining of a Levy upon a Judgment against him.*

UPON READING the Petition of Cpt: Ephraim Savage, Complaining of the Misfeasance of Cpt: Samuel Gookin Sheriff of the

County of Middlesex, in the Levying of an Execution or Writt of Haberi facias Possessionem, granted upon a Judgement given against him at a Superiour Court of Judicature holden at Charles-town within the County afore said, on the twenty seventh of January 1707, at the Suit of Francis Smith Yeoman, & Jeremiah Swayne Chirurgeon & Mary his Wife, all of Reading, for their Title and Possession of & in One Hundred Acres of Land scituate in Reading afore said in the County afore said, within the Bounds of a Farm formerly the Estate of Francis Smith Dec<sup>d</sup> Ajoining to the Homestead of the Said Cpt: Savage :

It evidently appearing on the Face of the Record of the said Judgement & Precept, & the Sheriffs Return'd thereon, that the Sheriff hath acted contrary to his Precept in Levying the Homestead of the said Savage or the greater Part thereof to his grievous Hurt & Damage, as of his Complaint in this Petition ;

*Ordered* That her Majesty's Justices of the Superio<sup>r</sup> Court of Judicature at their next Sitting in Court within the County of Midd<sup>x</sup> afores<sup>d</sup> Do Inspect the afores<sup>d</sup> Record and the Return made by the Sheriffe on the Precept to him Granted, And on Consideration of the Variance therein, and the mislaying thereof on the homestead of the s<sup>d</sup> Savage, to make void that Precept and the Service thereof ; And Award an alias Execution w<sup>th</sup> just cost and Damages to the party grived.

#### CHAPTER 165.

##### *Vote granting to Clem. Cock a Review of a Cause at Law.*

UPON READING a Petition of Clement Cock, Praying he may be Enabled to review a Cause heretofore tried between him & Joseph Hill Attorney to Anthony Penn, being without Remedy in the Course of the Common Law :

*Voted* that the Adverse Party be served with a Copy of this Petition & to shew Cause if any he have, why the Prayer thereof should not be granted, on the first Tuesday of the Session of this Court in May next. And that the Adverse Party be strictly forbidden to make any Strip or Wast of the Timber or Trees on the said Land in the Mean Time.

#### 1710-II.

#### CHAPTER 41.

##### *Order on Benj<sup>a</sup> Halewell & Frances Morse Petition to be Relieved from a Bond.*

UPON READING the Petition of Benjamin Halewell & Frances Morse Administratrix of the Estate of Benjamin Morse Dec<sup>d</sup> Pray-

ing to be relieved from a Bond wherein they became Surety for John Thwing Dec<sup>d</sup> for Paying his Brother & Sister their Portions of the Estate of their Father John Thwing Dec<sup>d</sup> his House & Land being forfeited & recovered upon Mortgage at the Suit of John Green of Boston Cooper;

*Ordered* that the Fifty Pounds<sup>1</sup> or so much as is justly due from the said Green upon his Accompt to be made up with the Judge of Probate after the said Judgement & Charges are satisfied be delivered unto the Judge of Probate within the County of Suffolk, And after the just Debts of John Thwing Mariner Dec<sup>d</sup> be discharged, The Surplusage or remaining Part of the said Money shall be distributed in rateable Parts to & among the Children of the said John Thwing the Elder; Having Consideration of what each of them received of their Brother John Thwing in his Life Time towards their Parts; And that the said John Green & the Petitioners shall be discharged of all & all Manner of Demands from any Person or Persons upon the Estate of either of the aforesaid Thwings.

## CHAPTER 116.

*Order Granting the Petition of Cpt. Jos: Eaton.*

UPON READING a Petition of Joseph Eaton Agent for the Freeholders, Proprietors & Inhabitants of the Town of Salisbury within the County of Essex, Praying on the Behalf of the Said Proprietors that they may be Enabled by an Act or Order of this Court to have the Hearing of a Cause before the Superiour Court of Judicature tryed at the Inferiour Court of Common Pleas held at Newbury in the County of Essex on the last Tuesday in September 1706: between John Coy of Wenham &c Plaintiff V<sup>s</sup> the said Proprietors Defend<sup>ts</sup> Who by their Agent appealed to the next Superiour Court of Judicature, Where the said Appeal was dismiss'd, for an Omission or Lapse in the Direction of the Reasons of Appeal, & have no Way open in the Course of the Common Law to bring on y<sup>e</sup> same again.

*Ordered.* That the Prayer of the Petition be Granted, and that the S<sup>d</sup> Proprietors be and hereby are allowed and Enabled to have a Hearing of the cause commenced ag<sup>t</sup> them by John Coy of Wenham Carpenter only surviving Son and heir of Richard Coy (said to be) formerly of Salisbury dece<sup>d</sup> In the Inferio<sup>r</sup> Court for the County of Essex held at Newbury on the 24<sup>th</sup> of Sept<sup>r</sup> 1706. and

<sup>1</sup> Green had admitted that he had "in his hands about Fifty Pounds after satisfying the judgment" in his favor. Mass. Archives, xvii. 246.

the Judgement given thereupon mentioned in the Petition, before the Superiour Court of Judicature to be hol[de]n<sup>1</sup> at Ipswich the third Tuesday of May next, in nature of an Appeal; and the Judges of the s<sup>d</sup> Superio<sup>r</sup> Court are hereby Impowred and Directed to receive, Hear and Try the said cause accordingly; And to allow an amendement of the Lapse or mistake in the Title or Directions of their Reasons of Appeale from the Judgem<sup>t</sup> of the afores<sup>d</sup> Inferiour Court formerly given in: So that the Appell<sup>ts</sup> cause the adverse party to be notified of this Tryal, by a Summons issuing out of the Clerks Office of the Superiour Court, and Served upon him fourteen day's at least before the Courts sitting; and in case they obtain Judgement upon this Tryal, no former Costs be Allowed them.

## CHAPTER 131.

*Order reviving a hearing on petition of Eleazar Walker.*

UPON READING a Petition of Eleazar Walker of Taunton annexed to his Petition presented to this Court in June last past, Praying for Relief in Equity against Joseph Tisdale of the same Place for not Rendring unto him the said Walker two Lotts or Shares of Land in the South Purchase in Taunton afore said, Which he conveyed to the said Tisdale for a Security (as he saith) for about Thirteen Pounds in Money borrowed of him, upon his Promise to restore the same upon Payment of the said Money, with Interest, W<sup>ch</sup> he now refuseth to do, And a Hearing of the said Matter being appointed on the first Tuesday of the last Session, Before which Time the said Parties entered into a Bond of Submission to leave their Differences to the Determination of certain Arbitrators therein named, But the said Tisdale neglected to attend the said Arbitrators, so that they declined to Make any Award upon the said Matter, PRAYING that his Petition may proceed & a Hearing be had thereon.

*Ordered* That the Hearing before appointed be Revived and continued to the Second Wednesday of y<sup>e</sup> next Session of the General Assembly.

And that the Pet<sup>r</sup> cause Joseph Tisdale the person complain<sup>d</sup> of to be Notified then to attend, by Serving him with a Copy of these Petitions and the Order of this Court thereupon.

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<sup>1</sup> Manuscript mutilated.



1712-1713.

## CHAPTER 36.

*Resolve Granting Jn<sup>o</sup> Clark Esq<sup>r</sup> Petition in Regard to Entail.*

UPON READING a Petition of John Clarke Esq<sup>r</sup> Setting forth that his Grand-father John Clark Gentleman of Boston within the County of Suffolk Physician diverse Years since Deceased being seized in his own Demesne as of Fee of a certain Messuage Tenement or Dwelling House with a large Yard & Garden adjoining & belonging, scituate at the Northerly End of the Town of Boston on the Westerly Side of Fish Street, & a Wharf & some Buildings lying on the Easterly Side of the Street & Right in the Flatts to the Sea-board thereof, All which he devised in & by his last Will & Testament to his only Son John Clark, Father of the Petitioner (since deceased) & the Heirs Male in Tail, now descended to the Petitioner, the Buildings being old & fallen to Despair, notwithstanding the Petitioners Disbursements of considerable Sums of Money from Time to Time to uphold the same, & will soon become ruinous without a far greater Expence made thereon, which the Petitioner is unable to advance without apparent wrong to his Family, having several Children; Proposing & Praying that the Tail may be cutt off from Part of the said Land on the Westerly Side of of<sup>1</sup> the afore said Street, Viz, on the Northerly Side thereof abutting on Gallops Alley so called, for Thirty Feet in Breadth Easterly next the Street, & the like Breadth on the Westerly End, abutting on Samuel Flacks Land, which will not be one Third Part of the Breadth of the whole Land on that upper Side of the Street & contains one Hundred Feet in Depth, & that the same may be assigned to him his Heirs & Assigns for Ever in Fee with out Limitation, that he will in Lieu thereof at his own Cost & Charge build out the Wharf on the Easterly Side of the Street One Hundred Feet in Length to the Sea-board of Thirty two Feet in Breadth, And erect a Building or Ware-house thereon of sixty Feet in Length & eighteen Feet wide to remain under the same Tail with the other Part of the Lands and Buildings:

William Clark only Brother of the Petitioner & next Heir in Tail to the Premises in Failure of the Petitioners Male Heirs, agreeing to the said Proposal & having subscribed the Petition;

*Ordered* that the Prayer of the Petition be Granted.

## CHAPTER 113.

*Order on John Websters Petition in Regard to an action of Trespass.*

UPON READING a Petition of John Webster of Hampton, Setting forth That in an Action of Trespass brought against him by Cpt. John Wadleigh of Salisbury for Cutting Thatch or Sedge in a certain Piece of Marish Ground belonging to the Petitioner, lying in the Township of Hampton within the Province of New-Hampshire, three Miles & a Quarter distant from Merimack River in any Part thereof, depending in the Inf<sup>r</sup> Court within the County of Essex, under Advisem<sup>t</sup> upon the Petitioners Plea to the Jurisdiction; Praying the Cause may be superseded, The Line betwixt the two Provinces not being adjusted & settled;

*Ordered* that the said Cause be superseded for six Months next Coming, And that the Justices of the Court govern them selves accordingly.

## CHAPTER 120.

*Ord<sup>r</sup> on Joshua Seeknouts Petition in Regard to a Judgment by Default against him.*

UPON READING a Petition of Joshua Suckenot Indian Sachem of the Island of Chepaquidock in Dukes County, Praying that a Cause lately given against him by Default in the Inferiour Court of Common Pleas holden at Edgar Town in the said County in an Action of Trespass brought against Nicholas & Phinehas Norton by John Norton before Benjamin Skiffe Esq<sup>r</sup> one of her Majesties Justices on the eighteenth of August 1712, Where the Petitioner at his Request was admitted Defend<sup>t</sup> & obtained Judgem<sup>t</sup> for Costs From w<sup>ch</sup> the said John Norton appealed to the Inf<sup>r</sup> Court afore said & there obtained the Judgem<sup>t</sup> by Default; Praying that the said Cause may be brought to the next Sup<sup>r</sup> Court of Judicature to be holden at Plimouth & that the said John Norton be obliged there to appear, that the Issue between him & the Petitioner may be there tried;

*Ordered* that the Prayer of the Petition be granted, That the Cause be brought to the next Superiour Court of Judicature to be holden at Plimouth & that an Ord<sup>r</sup> be drawn accordingly.<sup>1</sup>

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<sup>1</sup> In the following January Seeknout petitioned the legislature for the order which was to be drawn in his favor, and received it in these terms:—

“*Ordered* that the Prayer of the Petition be granted, & That the Court receive & hear the Cause accordingly the Petitioner Causing the adverse Party to be served with a copy of this Order by the Sheriff or his Deputy fifteen Days at the least before the Sitting of the said Court.” Legislative Records of the Council, ix. 255.

## CHAPTER 150.

*Resolve allowing Banisters Petition for an appeal from a Judgment.*

UPON READING a Petition of Thomas Banister of Boston Merch<sup>t</sup> Praying Relief for that at a late Inferiour Court of Common Pleas held at Boston for & within the County of Suffolk a Judgement was entered up by Default against the Goods & Effects of Jeremiah Garvan Merchant in Fayal in the Hands of the Petitioner as Factor for the said Garvan at the Suit of Moses Bow, the Petitioner being summoned to appear & answer to the said Suit, agreeable to the Act entituled An Act to enable Creditors to receive their just Debts out of the Effects of their absent or absconding Debtors, From which Judgement the Petitioner asked an Appeal, but was denied the same, And at an After-Inferiour Court upon a Writt of Scire facias, Judgement was entered up against the Petitioner to satisfy the Sum recovered by the Principal Judgement as of his own proper Debt, W<sup>ch</sup> will be to his Loss as he alledgeth several Hundred Pounds :

The Law allowing an Appeal generally in all Cases upon Judgements given in the Inferiour Court, And it appearing that the Petitioner demanded an Appeal sitting the Court within the Time limited by Law ;

*Resolved* that the Challenge of the Appeal ought to have been received, And that he be now admitted thereto & have the Benefit of the Law in that Respect to be heard before the next Superiour Court of Judicature to sit in Boston : And that the Judgement of the Inferiour Court upon the Scire facias and the Appeal depending thereon are hereby suspended.

1719-20.

## CHAPTER 130.

*Order on Gyles Dyers Petition.*

A PETITION of Gyles Dyer Merch<sup>t</sup> Shewing that at an Inferiour Court held at Boston for the County of Suffolk on the first Tuesday of October last past, he recovered Judgment against John Barnard late of Boston Merch<sup>t</sup> for the sum of two hundred eighty four Pounds twelve shillings & nine pence ; That at the same Court

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The Secretary's record of this second petition sets out more fully the nature of the suit in question. It is here stated that Seeknout complained "of undue Proceedings in a Suit brought by John Norton against Nicholas & Phineas Norton for Trespass for Driving a Mare of the said John Nortons off the said Island by Direction of the Petitioner, And in which Suit he was admitted Defendant." Ibid.

the said John Barnard recovered Judgment against the Petitioner in three Actions for the sum of two hundred and ninety pounds; but so it is, that the said Barnard is absconded, so that the Petitioner can receive no Benefit from his Judgment against Barnard, altho he has taken out Execution thereupon; but the Petitioner will be liable to the Execution of the said Barnard upon his three Actions, when Judgment should be made thereon, the same being respited by the Judges of the Superiour Court till the Court shall meet upon their adjournm<sup>t</sup> upon the Petitioners humble Petition to the Judges; that the said Barnard will have an Attorney to receive the Money recovered against the Petitioner, on purpose to defraud him; who will be left without Remedy unless relieved by this Hon<sup>ble</sup> Court, and therefore humbly praying that An Act may be made for his Relief; which may order the said Money levied by the said Barnard's Execution, to be lodged in the Superiour Court, that so it may be subjected to the Petitioners Execution, or otherwise, as to the Justice & Wisdom of this Hon<sup>ble</sup> Court may seem most proper & fitting.

*Ordered*<sup>1</sup> that the further Consideration of this Petition be refer'd to the next Session of this Court, & that in the mean time Executions be stayed on both Sides.

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<sup>1</sup> An order of hearing and notice to Barnard, passed November 26, having failed for want of Barnard's appearance.